

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDREW LOTT,

Plaintiff,

v.

KINGS E. BRADFORD BALES, et al.,

Defendants.

Case No. 10-cv-1593-JLR-JPD

REPORT AND RECOMMENDATION

Plaintiff is proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights action. By Order dated November 17, 2010, the Court declined to serve plaintiff's complaint and granted him leave to amend to correct the specified deficiencies in his complaint no later than December 27, 2010. Dkt. 12. When plaintiff failed to timely file an amended complaint, the undersigned issued a January 5, 2011 Report and Recommendation recommending that this action be dismissed without prejudice for failure to prosecute. Dkt. 13. On January 14, 2011, plaintiff filed a motion for extension of time to file his amended complaint. Dkt. 14. In a minute order dated January 19, 2011, the Honorable James L. Robart construed plaintiff's motion as a timely objection to the Report and Recommendation and ordered plaintiff to file his amended complaint by no later than February 8, 2011. Dkt. 15. On January 24, 2011, plaintiff filed his amended complaint in compliance with Judge Robart's minute order. Dkt.

1 16. Thus, the Court referred this matter to the undersigned for further proceedings on January
2 25, 2011. Dkt. 17.

3 On February 1, 2011, the Court declined to serve plaintiff's amended complaint and
4 granted him leave to file a second amended complaint correcting the specified deficiencies by
5 no later than March 3, 2011. Dkt. 12. The Court also advised plaintiff that if no second
6 amended complaint is timely filed, or the second amended complaint once again fails to correct
7 the above-mentioned deficiencies, the Court will recommend that this matter be dismissed for
8 failure to adequately allege a cause of action under 42 U.S.C. § 1983. *Id.* at 2-3.

9 Although mail sent to plaintiff has been returned to the Court as undeliverable on two
10 occasions because the mail was misaddressed, there is no indication on the docket that plaintiff
11 has not yet received the Court's February 1, 2011 Order declining to serve the amended
12 complaint. Specifically, the Court's February 1, 2011 Order was returned to the Court and
13 then re-sent to plaintiff on February 10, 2011. Taking into consideration this nine-day delay,
14 plaintiff's second amended complaint was due no later than March 12, 2011. To date,
15 however, plaintiff has not filed a second amended complaint.

16 Accordingly, the Court recommends that this § 1983 action be DISMISSED without
17 prejudice for failure to prosecute. A proposed order accompanies this Report and
18 Recommendation. The Clerk is directed to send copies of this Order to plaintiff and to the
19 Honorable James P. Donohue.

20 DATED this 25th day of March, 2011.

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22 JAMES P. DONOHUE
23 United States Magistrate Judge
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